

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3

4 LIONEL KING,

Case No. 2:21-cv-01452-CDS-BNW

5 Plaintiff

ORDER DENYING EMERGENCY
MOTIONS

6 v.

[ECF Nos. 12, 13]

7 JULIO CALDERIN, *et al.*,

8 Defendants

10 Pro se plaintiff Lionel King brings this civil-rights action under 42 U.S.C. § 1983 to
 11 redress constitutional violations that he allegedly suffered while he was incarcerated at High
 12 Desert State Prison (HDSP). ECF No. 4 at 1. On June 7, 2022, I screened King's first amended
 13 complaint, allowing claims to proceed, staying this case, and referring it to the court's Inmate
 14 Early Mediation Program. ECF No. 6. I instructed the parties that during the stay period and
 15 until the court lifted the stay, no other pleadings or papers could be filed in this case. *Id.* at 10. I
 16 also instructed that the parties did not need to respond to any paper filed in violation of the stay
 17 unless specifically ordered by the court to do so. *Id.*

18 The parties were assigned to a court-appointed mediator, and a mediation conference
 19 was scheduled for December 9, 2022. ECF No. 8. The parties did not reach a settlement at the
 20 mediation conference. ECF No. 14. As a result, the court granted King's application to proceed *in*
 21 *forma pauperis*, lifted the stay, and returned this case to the litigation track. ECF No. 17.

22 Before the court lifted the stay of this case, King filed an emergency motion for a
 23 preliminary injunction related to the diet that he is being fed at HDSP. ECF No. 10. I deferred
 24 further briefing on that motion until after the mediation conference if the parties did not reach a
 25 settlement. ECF No. 11. That motion is fully briefed. ECF Nos. 10, 19, 20. But I do not address
 26 that motion's merits in this order.

27 Before the court lifted the stay of this case, King filed a set of emergency motions for a
 28 temporary restraining order and a preliminary injunction seeking to prohibit defendant Julio

1 Calderin from having any contact or interaction with him. ECF Nos. 12, 13. Because King filed
 2 the motions in violation of the stay, defendants did not file a substantive response, and have
 3 asked for guidance about how to proceed. ECF Nos. 15, 16. For the reasons discussed below, I
 4 find that the emergency motions are not meritorious and do not require further briefing.
 5 Therefore, I deny the motions.

6 **I. LEGAL STANDARD**

7 Restraining orders and preliminary injunctions are “extraordinary remed[ies] never
 8 awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The legal standard
 9 for obtaining a temporary restraining order and the legal standard for obtaining a preliminary
 10 injunction are “substantially identical.” *See Stuhlbarg Intern. Sales Co. v. John D. Bush and Co.*, 240 F.3d
 11 832, 839 n.7 (9th Cir. 2001), *overruled on other grounds by Winter*, 555 U.S. at 20. The Supreme Court
 12 clarified the standard for these forms of equitable relief in *Winter v. Natural resources Defense Council,*
 13 *Inc.*, instructing that the plaintiff “must establish that [he] is likely to succeed on the merits, that
 14 [he] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
 15 equities tips in [his] favor, and that an injunction [or restraining order] is in the public interest.”
 16 555 U.S. at 20. The Ninth Circuit also recognizes an additional standard: “if a plaintiff can only
 17 show that there are ‘serious questions going to the merits’—a lesser showing than likelihood of
 18 success on the merits—then a preliminary injunction may still issue if the ‘balance of hardships
 19 tips sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc.*
 20 *v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*,
 21 632 F.3d 1127, 1135 (9th Cir. 2011)).

22 A plaintiff who seeks a mandatory injunction—one that goes beyond simply maintaining
 23 the status quo during litigation—bears a “doubly demanding” burden: “[he] must establish that
 24 the law and facts *clearly favor* [his] position, not simply that [he] is likely to succeed.” *Garcia v.*
 25 *Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc). The Ninth Circuit has cautioned that
 26 mandatory injunctions are “particularly disfavored” and “should not issue in doubtful cases.” *Id.*
 27 (internal quotations omitted). The Prison Litigation Reform Act (PLRA) similarly instructs that
 28 any restraining order or preliminary injunction granted with respect to prison conditions “must

1 be narrowly drawn, extend no further than necessary to correct the harm the court finds
 2 requires preliminary relief, and be the least intrusive means necessary to correct that harm.” 18
 3 U.S.C. § 3626(a)(2).

4 Finally, “there must be a relationship between the injury claimed in the motion for
 5 injunctive relief and the conduct asserted in the underlying complaint.” *Pac. Radiation Oncology,*
 6 *LLC v. Queen’s Medical Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015) (*Pacific Radiation*). “This requires a
 7 sufficient nexus between the claims raised in a motion for injunctive relief and the claims in the
 8 underlying complaint itself.” *Id.* The necessary connection is satisfied “where the preliminary
 9 injunction would grant ‘relief of the same character as that which may be granted finally.’” *Id.*
 10 (quoting *De Beers Consol. Mines*, 325 U.S. 212, 220 (1945)). “Absent that relationship or nexus, the
 11 district court lacks authority to grant the relief requested.” *Id.*

12 II. DISCUSSION

13 King declares and argues in his emergency motions that around July 19, 2022, while he
 14 was in Calderin’s office, Calderin “grabbed the plaintiff aggressive by the bicept [sic], squeezing
 15 hard, and shook the plaintiff aggressively while stating ‘this guy, this guy.’” ECF No. 12 at 2, 18–
 16 19. Calderin then put his hands around King’s neck and squeezed while stating that he was
 17 going to kill King because King was suing him. *Id.* Correctional officer Rodriguez saw the
 18 incident and was surprised. *Id.* King was fearful and left the office for his own safety. *Id.* He later
 19 filed a grievance about the incident. *Id.*

20 A week later while King was in the chapel discussing issues with Rodriguez, Calderin
 21 snuck up behind King and yelled “what are you doing here?” *Id.* at 11, 19. The yell was loud
 22 enough to cause King’s ear to briefly ring and heart to race, and to make him jump. *Id.* King seeks
 23 an order prohibiting Calderin from the chapel during the pendency of this action and preventing
 24 defendants from transferring King to another prison. *Id.* at 3.

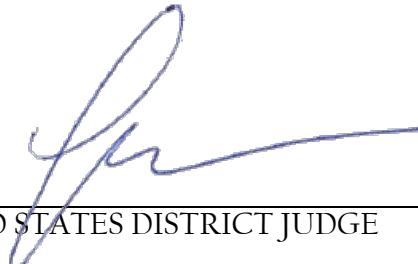
25 King’s first amended complaint brings claims under the First Amendment’s Free Exercise
 26 Clause, the Religious Land Use and Institutionalized Persons Act of 2000, and the Fourteenth
 27 Amendment’s Equal Protection Clause about defendants’ refusal to place King on the common
 28 fare diet because he is a member of the Native American faith group, which does not have any

1 special dietary needs. *See* ECF No. 3. King's emergency motions argue that Calderin retaliated
2 against him for exercising his First Amendment rights by filing this lawsuit and committed
3 assault and battery in violation of Nevada law. Like the claims in *Devoe v. Herrington*, these are
4 "new assertions of misconduct [that] might support additional claims against [defendant
5 Calderin]," but they do not support King's request for a restraining order and injunctive relief
6 because they are "entirely unrelated to the conduct asserted in the underlying complaint." *Pacific
7 Radiation*, 810 F.3d at 636 (citing *Devoe v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994)). Moreover, I
8 find that the evidence does not show that King will suffer irreparable harm in the absence of
9 relief. Although Calderin's behavior is concerning, King waited over four months before bringing
10 a motion about it. And I find that the relief King seeks is not narrowly drawn as required under
11 the PLRA. I therefore deny the emergency motions.

12 **III. CONCLUSION**

13 It is therefore ordered that the emergency motions for a temporary restraining order and
14 injunctive relief (ECF Nos. 12, 13) are DENIED.

15 DATED this 24th day of January, 2023.

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18 UNITED STATES DISTRICT JUDGE

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